

Message Text

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ACTION CU-05

INFO OCT-01 EA-11 ISO-00 L-03 NSC-07 NSCE-00 USIA-15 SS-20

CPR-02 SCI-06 NGA-01 EUR-25 /096 W

----- 104950

R 300415Z AUG 74

FM USLO PEKING

TO SECSTATE WASHDC 2322

C O N F I D E N T I A L PEKING 1494

E.O. 11652: GDS

TAGS: SCUL CH

SUBJECT: ARCHEOLOGICAL EXHIBITION NEGOTIATIONS - SOME
FURTHER THOUGHTS

REF: A. PEKING 1481 B. PEKING 1479 C. PEKING 1473

1. USLO BELIEVES WE HAVE REACHED A POINT IN OUR
NEGOTIATIONS FOR ARCHEOLOGICAL EXHIBITION WHERE WE
SHOULD MOVE TO CONCLUDE AGREEMENT ON TERMS NOW OFFERED
TO US. WHILE THESE TERMS MAY NOT BE WHOLLY SATISFACTORY,
FURTHER DISCUSSION ALMOST CERTAINLY WILL BE USELESS AND
COULD WELL BE COUNTER-PRODUCTIVE. OTHER COUNTRIES HAVE
REACHED SAME CONCLUSION IN FACE OF CHINESE RIGIDITY.

2. AN EXAMPLE OF FUTILITY OF TRYING TO BUDGE CHINESE
CAN BE FOUND IN DISCUSSION OF FORCE MAJEURE CLAUSE. IN
ORIGINAL ENGLISH DRAFT GIVEN US ON MAY 9, RELEVANT
PASSAGE READ "IN THE EVENT THAT LOSS OR DAMAGE RESULTS
FROM SUCH ACTS OF FORCE MAJEURE AS CRASH OF AIRCRAFT, WAR
OR WARLIKE OPERATIONS OR STRONG EARTHQUAKES, COMPENSATION
SHALL BE PAID..." THIS FORMULATION APPEARED TO MEET
OUR NEEDS COMPLETELY, AND WAS IN FACT CLEARER AND MORE
COMPREHENSIVE THAN THE BRITISH, SWEDISH AND CANADIAN
ENGLISH TEXTS. WE CHOSE, HOWEVER, ENTIRELY TO RE-WORD
THIS PARAGRAPH TO COVER RELATED BUT NOT CRUCIAL ISSUES --
ALL OF WHICH WE HAVE SUBSEQUENTLY DECIDED TO DEAL WITH
BY OTHER MEANS.

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3. FOLLOWING RECEIPT OF SECOND CHINESE DRAFT WE FELT IT NECESSARY TO ASK FOR CHINESE ASSURANCES THAT FORCE MAJEURE CLAUSE NOT LIMITED TO THREE SPECIFIC CASES CITED, I.E. PLANE CRASH, WAR OR EARTHQUAKE, AND THAT IT WOULD BE TRANSLATED AS IN BRITISH AND CANADIAN TEXTS. THIS PRODUCED EXPLICIT CHINESE STATEMENT THAT ONLY ABOVE THREE CASES INCLUDED UNDER FORCE MAJEURE AND THEIR REVISION OF ENGLISH TEXT TO MOST RESTRICTIVE ENGLISH VERSION OF ANY WE HAVE SEEN THUS FAR.

4. WHETHER THESE DEVELOPMENTS WERE A RESULT OF CHINESE DESIRE TO RAP THE KNUCKLES OF BARBARIANS WHO APPEAR UNGRATEFUL AT RECEIVING THE CULTURAL LARGESSE OF THE MIDDLE KINGDOM OR CHINESE SUSPICION AND INSECURITY OVER POSSIBLE ATTEMPTS TO EVADE RESPONSIBILITY THROUGH LEGAL DEVICES, THE RESULT HAS BEEN THAT WE HAVE NEGOTIATED OUR WAY FROM THE BEST CASE TO THE WORST CASE. THE PROBLEM NOW IS WHAT TO DO NEXT IN ORDER TO SATISFY OUR NEEDS AND OUR COMMITMENT TO CONGRESS. IF WE CHOSE TO GO BACK WITH REJECTION OF CHINESE POSITION WE SHOULD PROBABLY BE PREPARED TO THREATEN CANCELLATION OF ENTIRE EXHIBITION, BECAUSE NOTHING SHORT OS THAT IS LIKELY TO CHANGE THEIR VIEWS. IF WE ARE NOT PREPARED TO DO THAT -- AND WE ASSUME WE ARE NOT -- FURTHER HAGGLING WILL BE POINTLESS.

5. IN USLO VIEW, PROBABLY THE BEST WAY TO COVER OURSELVES ON FORCE MAJEURE QUESTION AT THIS POINT WOULD BE A DIPLOMATIC NOTE POINTING OUT THAT TRANSLATION OF TEXTS OF VARIOUS AGREEMENTS FROM CHINESE HAS NOT ALWAYS BEEN CONSISTENT,BUT THAT IT IS OUR UNDERSTANDING THE UNITED STATES IS TO BE TREATED EXACTLY IN SAME MANNER AS OTHER COUNTRIES TO WHICH EXHIBITION HAS GONE. HSIAO TEH HAS ALREADY ASSURED US ORALLY THAT THIS IS THE CASE, AND WE THUS WOULD, IN EFFECT, CLAIM SAME PROTECTION AS BRITISH, FRENCH, AUSTRIANS AND SWEDES.

6. CONCERNING OTHER POINTS WHICH CHINESE HAVE REFUSED TO CHANGE AND WHICH WE INTEND TO HANDLE BY DIPLOMATIC NOTE, USLO HOPES THAT DEPARTMENT WILL CAREFULLY SCRUTINIZE THESE POINTS AND LIMIT THEM TO THOSE THAT ARE ABSOLUTELY NECESSARY. IN A NUMBER OF CASES IT APPEARS TO US THAT THE NEGOTIATING RECORD SHOULD SUFFICE, AND WE ARE CONCERNED THAT A LENGTHY NOTE COVERING ALL POINTS WHICH CHINESE REFUSED

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TO CHANGE IN TEXT WILL SIMPLY AROUSE THEIR SUSPICIONS ANEW AND RESULT IN REJECTION OF THE NOTE. SINCE ALL THOSE FAMILIAR WITH DETAILS OF CANADIAN NEGOTIATIONS HAVE LEFT CANADIAN EMBASSY HERE, DEPARTMENT MIGHT ASK EMBASSY OTTAWA TO DETERMINE CANADIAN APPROACH TO THIS PROBLEM.

7. IN CONCLUSION, WE WOULD LIKE ONCE AGAIN TO STRESS THAT CHINESE APPROACH TO NEGOTIATIONS ON TEXT OF LETTER AND

PROTOCOL HAS BEEN LONG ON "GOODWILL" AND AMBIGUITY WHILE
REMAINING ALMOST TOTALLY RIGID ON CHANGES TO THEIR TEXT.
RESULTS OF NEGOTIATIONS WILL CERTAINLY FALL FAR SHORT OF
OUR DESIRE FOR NEATLY TIED LEGAL PACKAGE, BUT FORMULA
HAS WORKED THUS FAR WITH AT LEAST SEVEN OTHER COUNTRIES.
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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: ARCHEOLOGY, CULTURAL PROPERTY, CULTURAL EXCHANGE AGREEMENTS, CULTURAL EXHIBITS, NEGOTIATIONS
Control Number: n/a
Copy: SINGLE
Draft Date: 30 AUG 1974
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: garlanwa
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1974PEKING01494
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: GS
Errors: N/A
Film Number: D740240-0713
From: PEKING
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1974/newtext/t1974084/aaaaactq.tel
Line Count: 121
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION CU
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators:
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: A. PEKING 1481 B. PEKING 1479 C. PEK, ING 1473
Review Action: RELEASED, APPROVED
Review Authority: garlanwa
Review Comment: n/a
Review Content Flags:
Review Date: 15 APR 2002
Review Event:
Review Exemptions: n/a
Review History: RELEASED <15 APR 2002 by boyleja>; APPROVED <13-Aug-2002 by garlanwa>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: ARCHEOLOGICAL EXHIBITION NEGOTIATIONS - SOME FURTHER THOUGHTS
TAGS: SCUL, CH, US
To: STATE
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005